

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

May 10, 2005

Chairman R. Hilt called the meeting to order at 4:03 p.m. and roll was taken.

MEMBERS PRESENT: C. Kufta, E. Fordham, J. Wallace, R. Hilt, S. Brock, B. Larson,
J. Clingman-Scott

MEMBERS ABSENT: None

STAFF PRESENT: M. Cameron, D. Leafers

OTHERS PRESENT: C. Collins, 2937 Getty; M. Hacker, 2199 Becker; P. and M. Oakes,
2379 Park Dr.; T. Johnson, 2361 Park Dr.; S. (Carrier) Patrick,
3309 Lakeshore Dr.; J. Stapel, 1903 Marquette; J. Buck, 500 Irwin
Ave; P. Stearns, 594 S. Quarterline

APPROVAL OF MINUTES

A motion that the minutes of the regular meeting of April 12, 2005 be approved was made by J. Clingman-Scott, supported by B. Larson and unanimously approved.

PUBLIC HEARINGS

Hearing, Case 2005-006: Request for a variance from the required thirty-foot rear setback to a rear setback of eight feet, to allow construction of three duplex structures at 2495 Barclay Street, by Chris Collins and Paul Hoekstra of CP Investment Properties LLC. M. Cameron presented the staff report. Property owners are requesting a 22-foot rear setback variance for the west lot line, having a proposed setback of 8 feet rather than the required 30 feet. The subject property is facing Barclay St. and bordered by a deep ravine and creek to the south, vacant land to the west and a single-family residence to the north. The adjacent property to the south is zoned B-4, General Business, the properties to the west and north are zoned R-1 Single Family. Across Barclay St. is a PUD Overlay development. The applicant is proposing to build three single story duplex apartment buildings on the site. The applicant's site plan indicates the eight-foot setback from the corner of the westerly building to the lot line. This may appear to be a side setback dimension but by ordinance definition it is considered a rear setback. The property is an irregularly shaped lot with 383.89 feet of frontage along Barclay and 322.78 feet along the west lot line. The south lot line is 223.9 feet long running along the creek, and the north lot line adjacent to the residential structure is 220 feet in length. The Zoning Administrator has reviewed the site plan and is prepared to approve the plan with whatever conditions the various city departments may place upon it. Staff received three comments regarding this case. P. and M. Oakes who own the property directly to the west were opposed to the development. R. Vanderwest of 2355 Vincent and A. Sibille of 1036 Wildwood were also opposed.

J. Clingman-Scott asked about the zoning and setbacks. M. Cameron stated the buildings were single story dwellings, so the rear setback requirement was 30 feet. E. Fordham asked if this development should fall under the PUD that was across the street. M. Cameron stated no. M. Hacker from Innovative Design Inc. spoke on behalf of the applicants. He stated that due to the ravine on the property, the buildings had to be placed sideways to take advantage of the aesthetics of the ravine. Two of the buildings comply with setback requirements; only one does not. E. Fordham asked if the building in question is the one to the south. M. Hacker stated yes. J. Clingman-Scott asked about the tree line. M. Hacker stated some trees would have to be removed. He also stated that only 8% of the lot would be covered with buildings, which was much less than the 50% allowed. B. Larson was concerned about condition #5 of the findings of fact, which stated that the (zoning) difficulty was “not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner”. He suggested that the building in question could be changed to a single-family building rather than a duplex and that may then negate the need for a variance.

P. Oakes asked what size the units would be, and if they would have garages. M. Hacker stated each unit would be 1300 square feet for a total of 2600 square feet per building, with each unit having a two-stall garage. He stated the units would have walkout basements, and part of that area was included in the square footage calculations. P. Oakes voiced concerns about the cars and visitor parking available for six families. He asked if the developers intended to rent or sell the units. C. Collins stated the units would be sold as condominiums. M. Hacker stated each unit had a two-stall garage so they shouldn't need much outdoor parking. Additional vehicles would have to park in the driveway in front of the garage door. P. Oakes asked what would protect his vacant lot. M. Hacker stated they were willing to erect a fence along the property line. B. Larson stated that if the variance was granted, the Board could include conditions to make it more agreeable to the neighbors. M. Oakes stated there were deer, fox, and birds in the area and was concerned about the disruption to the wildlife. She thought they planned to fill in the ravine. M. Hacker said no, they wanted to maximize the natural beauty of the property. P. Oakes asked about eliminating the last duplex. R. Hilt stated if the last building was changed to single family rather than a duplex, it would eliminate the need for a setback and possibly some of the objections to the project. M. Hacker stated that was one option, or they could change the units to fourplexes but that would be less attractive. T. Johnson felt the duplexes would be too much for the property. He stated the area was unique in that it offered a country setting in the city.

A motion to close the public hearing was made by J. Clingman-Scott, supported by B. Larson and unanimously approved.

J. Clingman-Scott stated it was nice to preserve green space, but a person can't be denied the right to develop their property. The Board may place conditions to protect the adjacent property. This plan was friendlier toward land preservation than some of the other options available. The density was less than one quarter of what was allowed, and this type of development should be encouraged. B. Larson stated it might be better to table the action and have the developers meet with staff and the adjacent property owners. J. Clingman-Scott suggested putting a fence on the treeline between the adjacent property and constructing the fence of natural materials. R. Hilt stated the developers didn't seem to be in favor of changing the one unit to a single family, and he still had some concerns about the findings of fact regarding profitability. E. Fordham stated he visited the property and did notice the deer; however, the development will proceed one way or another and this option seems more desirable than other possibilities. He stated the PUD across the street had utilized the zero lot line option for their development. B. Larson suggested that the motion include a condition for a fence. C. Kufta stated it was hard to communicate exactly what

the residents and developers had in mind, and he preferred further discussion and perhaps tabling this until next month. B. Larson stated that since the owners were here they should try to resolve this. S. Brock suggested that the floor be opened back up to ask the developers what kind of fence they had in mind.

P. Oakes stated he still preferred five units to six and he was not satisfied with a fence because it would block the view. M. Cameron stated that if this case was referred back to staff, there was a zero lot line option available in RT zoning that the developers could pursue, and it would not require a variance. R. Hilt realized that residents in the area have enjoyed the country-like setting for some time, but they don't own this parcel and what the owners proposed was very reasonable. B. Larson asked the developers about the fence. M. Hacker stated they could build a berm instead, with the planting of pine trees to make it more natural.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. The requested variance is the minimum action required to eliminate the difficulty.

A motion to approve the variance contingent upon construction of a natural berm with appropriate plantings was made by J. Clingman-Scott and supported by B. Larson, with discussion continuing.

C. Kufta asked if the developers could expand on the berm details. M. Hacker explained several options including berm height and the type of plantings that could be used. E. Fordham asked about a time frame for the berm to be completed, and suggested thirty days from building completion. M. Hacker stated there were only certain times of year when trees could be planted.

An amended motion to approve the variance to reduce the required rear setback to eight feet to allow construction of three duplex structures at 2495 Barclay Street with the conditions that 1) the variance is recorded with the deed to keep record of it in the future, 2) the additions to the property must be completed within one year or the variance is void, and 3) the variance is granted for the plans currently submitted and known as Minor Site Plan Review case # 2004-012 Barclay Condos, with the addition of a 3-foot 6-inch berm of natural materials constructed on the rear setback with fir-type trees spaced 8 feet apart to be completed within six months of the completion of unit 4, was made by J. Clingman-Scott, supported by B. Larson and unanimously approved.

Hearing, Case 2005-007: Request for a variance from Section 2311 to allow more than one Accessory Structure (shed) on the property at 3309 Lakeshore Drive, by Darryle Patrick and Susan Carrier. M. Cameron presented the staff report. The subject property is facing Lakeshore Drive with the home built on the slope of a hill. The adjacent properties are zoned R-1, Single Family. This property is not in the critical dune area. This case is the result of an enforcement

action initiated in October of 2004 when a shed housing a hot tub was discovered on the property and for which no permits had been applied. In addition to the structure that houses the hot tub, there is a previously existing structure (shed) in the rear yard. Size of the structures is not directly regulated by ordinance. The Zoning Ordinance regulates lot coverage by the total square feet of all structures on the property. The total coverage of all structures may not be more than 50% of the total property area; the total area of all structures on this lot will be within this coverage allotment. Section 2311 of the Zoning Ordinance would allow a second accessory structure only if one of them were a garage or other shelter for an automobile. No electrical or plumbing inspections have been or will be performed on the shed or associated systems until this structure receives zoning approval. Staff has received two comments regarding this case. S. Kalagaropius at 3317 Thompson was in favor of the request, as was S. Line of 3340 Millard.

J. Clingman-Scott asked if the property owners would be able to do anything else on the property, like build a garage, if the variance was granted. M. Cameron stated they would. S. Patrick stated she didn't foresee any garage being built, and that there was a large slope on the property, limiting the building options. E. Fordham asked why no permits were obtained. S. Patrick stated she did apply for a development permit but did not realize a zoning variance was required. R. Hilt felt an electrical inspection was important for the shed, due to the hot tub. J. Clingman-Scott asked if the proper procedure had been followed, would it have resulted in the proper inspections being done. M. Cameron stated it would have. B. Larson stated that many residents are not aware of what permits are required and what procedures must be followed for property improvements.

A motion to close the public hearing was made by J. Clingman-Scott, supported by B. Larson and unanimously approved.

J. Clingman-Scott stated the shed seemed to fit all other City requirements. E. Fordham stated he looked at the property and the shed looked nice. J. Clingman-Scott asked if an electrical inspection would be required if the variance was approved. M. Cameron stated yes.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. The requested variance is the minimum action required to eliminate the difficulty.

A motion to approve a variance from Section 2311 to allow more than one accessory structure on the property at 3309 Lakeshore Drive provided 1) the variance is recorded with the deed to keep record of it in the future, 2) the additions to the property must be complete within one year (Sec. 2504) or the variance is void, 3) the variance is for a second accessory structure as proposed within the variance application and site plan, and 4) the accessory structure would have to be removed if no longer used as a shelter for a hot tub, was made by J. Clingman-Scott, supported by B. Larson and unanimously approved.

Hearing, Case 2005-008: Request for a variance from Section 2331 to allow construction of a 12-foot tall fence to shield a water cooling tower, in an RM-1, Low Density Multiple-Family Residential Zone at 1903 Marquette, by Joe Stapel of Baker College. M. Cameron presented the staff report. The subject property is a college campus facing Marquette Avenue and Quarterline Road. The adjacent properties across Quarterline from the proposed fence/screen are zoned RT, Two Family Residential. The maximum height of all fences in residential districts is six feet when behind a front building line. This site was formerly owned by the State of Michigan and because of this was exempt from zoning regulations. Had staff been able to review the plans for the complex when it was built, we most likely would have suggested a different location for the tower or required that it be screened as part of our site plan review process. The water-cooling tower is located near the parking area just west of Quarterline Road and is behind the front building lines of the two nearby buildings. The current cooling tower is a recent replacement of a previous cooling tower, and is similar in dimensions. Staff has not received any comments regarding this case.

E. Fordham asked if all four sides of the fence would be as pictured in the plans. J. Stapel stated they would. J. Buck stated R. Amidon has gone out of his way to approve the aesthetics of the campus and this fence was intended to shield the view of the cooling tower. It will be constructed of rough-sawn cedar. P. Stearns stated he originally thought the fence was going to go around the entire campus. J. Stapel stated it would be around the cooling tower only.

A motion to close the public hearing was made by B. Larson, supported by J. Clingman-Scott and unanimously approved.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner. The requested variance is the minimum action required to eliminate the difficulty.

A motion to approve the variance request to allow construction of a 12-foot tall obscuring fence at 1903 Marquette as shown on the site plan provided, and subject to the conditions that 1) the variance is recorded with the deed to keep record of it in the future, and 2) the additions to the property must be complete within one year (Sec. 2504) or the variance is void, was made by B. Larson, supported by J. Clingman-Scott and unanimously approved.

OTHER

None

There being no further business, the meeting was adjourned at 5:00 p.m.